

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

CRP.No. 689 of 2007()

AGAINST THE ORDER DATED 13/03/2007 IN EP 769/2006 IN
OA.1/2006 of PRL.M.C.,IRINJALAKUDA
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REVN. PETITIONER: JUDGEMENT DEBTOR/DEFENDANT

JOHNSON, AGED 49 YEARS, S/O.RAPPAI,
KIZHAKKANNODEN HOUSE, IRINJALAKUDA DESOM,
MUKUNDAPURAM TALUK.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS: DECREE HOLDER/PLAINTIFF

MINI SASIDHARAN, AGED 42 YEARS,
W/O.SASIDHARAN, KAVALLLOOR HOUSE,
IRINJALAKUDA DESOM, MUKUNDAPURAM TALUK.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 689 OF 2007

Dated this the 25th July, 2007.

O R D E R

This revision petition is preferred against the order of the learned Munsiff, Irinjalakuda in E.P.769/06 in O.A.1/2006. The execution petition was filed for realisation of the decree amount by arrest and detention of the judgment debtor in civil prison. The decree holder deposed before the court that the judgment debtor is a bus conductor by profession having a monthly income of Rs.6,000/- and another income Rs.2,000/- from movable and immovable properties. The judgment debtor would contend that he has no immovable properties and he does not have any job as a conductor of the bus and therefore, he cannot be arrested. The court below found that the judgment debtor has not produced any document to show that he is unable to go to job due to his heart disease. Therefore, the court below accepted the evidence of P.W.1 and ordered arrest. Learned counsel for the revision petitioner has brought to my notice a bunch of documents to prove that the revision petitioner is suffering from coronary artery disease. It has to be stated that in a case of this nature there must be some evidence to substantiate the means. Mere capacity to work will not ipso facto prove the factum

of means. There must be income. There are decisions of the Apex Court to the effect that when a person is chronically ill or some of his family members are suffering and amount has to be expended for that purpose, one cannot hold that there is deliberate evadement of the payment which also a necessary ingredient to order arrest {see **Jolly George Varghese v. Bank of Cochin** (1980 KLT 375 SC)}. Therefore, the order under challenge is set aside. The matter is remitted back to the court below for fresh disposal in accordance with law, after giving equal opportunity to the petitioner as well as the decree holder. The court shall give notice to the decree holder and fix a date for hearing before proceeding with the matter. Writ petition is disposed of accordingly.

M. N. KRISHNAN
Judge